In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 977

DELORES WATKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App.) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1966. Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to and including January 17, 1967, and on January

16, 1967, the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether evidence of narcotics was properly admitted on the basis that the narcotics had been seized incident to a valid arrest.

2. Whether petitioner was prejudiced at trial by certain hearsay testimony.

STATEMENT

An indictment returned in the United States District Court for the Northern District of Illinois charged petitioner and one Lulu Jackson with narcotic offenses in violation of 21 U.S.C. 174. After a jury trial, petitioner was convicted on each of the two counts under which she was charged. On December 28, 1964, she was sentenced to imprisonment of 11 years on each count, the terms to run concurrently with each other and concurrently with a five-year sentence imposed as a result of her conviction of other narcotic offenses in a separate trial[1] (R. 22). The court of appeals affirmed.

The government's evidence was developed through the testimony of federal narcotic agents, one of whom (Agent Patch) had monitored telephone conversations between a government informer and the co-defendant

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[1] See *United States* v. *Jones*, 369 F. 2d 217 (C.A. 7), petition for a writ of certiorari pending, No. 976, this Term.

Jackson. This evidence showed that on the morning of March 26, 1964, an informer telephoned Mrs. Jackson for narcotics and was told that she would call him later (Tr. 77-78). Thereafter federal agents followed petitioner and Mrs. Jackson and saw them enter an apartment in South Chicago. Mrs. Jackson emerged briefly a short time later and placed a tinfoil package on the ground outside the rear of the building (Tr. 257-262). At about this time Mrs. Jackson called the informer to say that she was now at the apartment and that he could come with the money and "pick up the piece" (Tr. 79).

The informer, together with another informer and federal agents, proceeded to the rear of the South Chicago apartment (Tr. 79-81). There Agent Patch was shown the tinfoil package which had been recovered from where Mrs. Jackson had placed it, and which had been field-tested by other agents and found to contain heroin. Agent Patch ascended steps to the common back porch of the first floor of the building and observed, through the glass panel of the apartment door, the defendants at a dining room table on which there was white powder and tinfoil. Mrs. Jackson was holding a strainer and petitioner was pouring white powder through the strainer (Tr. 85-88).

Thereafter the two informers, standing alone on the porch, knocked on this rear door (Tr. 89). Petitioner opened the door. Patch and two other agents rushed up the stairway, announcing themselves as Federal Narcotic Agents. They displayed their badges and told petitioner she was under ar-

rest.[2] Petitioner, standing in the doorway, fought to obstruct entry, but was subdued by the agents who entered and placed her under arrest (Tr. 89, 151). Meanwhile, Mrs. Jackson had seized a package from the dining table and had sought refuge under a bed where she was found and arrested by another agent subsequently admitted through the front door (Tr. 265-266).

On the dining room table, the officers found heroin and narcotic paraphernalia (Tr. 93, 96, 152). Heroin was also found in petitioner's pocket book and on co-defendant Mrs. Jackson's person (Tr. 100-101, 158, 218-222).

ARGUMENT

1. Petitioner does not dispute—nor does this record leave reason for doubt—that the officers had probable cause to arrest her without a warrant. The agents had knowledge that petitioner's companion in the apartment had transported heroin therefrom a few minutes prior to the arrest. From a point outside, they could see petitioner and her companion actively engaged in what, on the basis of their experience,

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[2] Patch described the entry in this fashion (Tr. 89):

"As the door was being opened by Delores Watkins, I rushed into the door from upstairs announcing myself as a Federal Narcotic Agent, displaying my badge at the same time and attempted to go into the door, telling Delores Watkins that she was under arrest. * * * Delores Watkins was trying to keep me from coming in. She was striking me with her fists and kicking me. During the struggle I saw Lulu Jackson brag a package off the dining room table and run out of my sight."

they could only conclude was the diluting and packing of the drug. In light of this information, the circumstances of their entry were not such as to invalidate the ensuing arrests.[3] While admittedly the officers "rushed" toward the door when petitioner opened it to admit the informers, the testimony of Agent Patch is unequivocal that, in so doing, he identified himself, displayed his badge, and apprised petitioner of the agents' purpose to arrest (note 2, *supra;* see also Tr. 151). These circumstances distinguish this case from that of *Miller* v. *United States*, 357 U.S. 301, upon which petitioner relies.[3] It is obvious, moreover, that petitioner was fully aware of the purpose of the agents. Her violent reaction to their attempted entry could hardly be equated with ambiguous conduct or the normal reaction of any citizen at this time of day. Cf. *Miller*, 357 U.S. at 311. Rather, her conduct, and that of her co-defendant Mrs. Jackson in first seizing a package and then fleeing at the sight of the officers, graphically illustrates the necessity for the officers to act as they did in arresting without delay, so that the evidence might not be destroyed. *Id.* at 309; *Wong Sun* v. *United States*, 371

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[3] The other cases cited by petitioner do not aid her position. The case of *Jones* v. *United States*, 357 U.S. 493, involved a forceful night-time entry and search not incident to arrest. *McDonald* v. *United States*, 335 U.S. 451, is distinguishable as involving months of surveillance. Moreover, that decision relied on *Trupiano* v. *United States*, 334 U.S. 699 which was overruled by *United States* v. *Rabinowitz*, 339 U.S. 56, in so far as *Trupiano* held invalid a search incident to arrest on the ground that there was time to obtain a warrant.

U.S. 471, 484. The search incident to this arrest was therefore valid.

2. Little need be said with respect to the renewed claim that petitioner was unfairly prejudiced by certain hearsay testimony. She refers to the testimony of Agent Patch to the effect that a named informer, before dialing a telephone number admittedly belonging to co-defendant Jackson, had promised the officer that he would make a call to his source of supply and permit the latter to listen. This was brought out incidentally while the officer was laying a foundation to show that he had monitored the informer's conversations with his permission (see Tr. 77). If this constituted error at all, it was, as the court below held, obviously harmless in view of evidence showing petitioner to be in actual possession of heroin.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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